the appellants to succeed; because there is the second question which we have to consider: assuming that the condition applies, is it one upon which the vendors are entitled to rely? And when we look at the authorities, and particularly the recent authorities in the Court of Appeal, that is the way in which conditions of this kind have been dealt with, and ought to be dealt with, by the Court. It is not enough for the vendor to say: Here is a condition which, as a matter of construction, entitles me to rescind this contract. The answer is: No, you must look at all the circumstances; are they such as to entitle you to put an end to that contract of sale which, in form and in fact, you have entered into?"

By parity of reasoning the same principles are applicable in a situation such as the present case, where the contract gives a right to the purchaser to annul a purchase in certain circumstances, namely, if any of the answers to the requisitions are found to be unsatisfactory to the purchaser or his solicitor. In our judgment, the exercise of that right under a clause, such as Clause 6, is equally subject to the control of the court. In the words of Viscount Radcliffe, it is the use of that right that is not to be arbitrary or without reason, and the court will not allow a purchaser to call the whole contract off in the face of any of the answers to requisitions which he takes what is merely a capricious or fanciful objection.

We now turn to the facts of the present case. The area affected by the proposal for road widening was only about 30.6 sq. m. or 329 sq. ft. The learned Judge found this area inconsequential and we agree with him entirely. Mr. Karthigesu conceded that he had difficulty in joining issue on this point; the point is really unarguable. Further, the road proposal would only become relevant upon future redevelopment of the property and this was clarified by a letter of January 21, 1983, written by the PWD to the solicitors for the respondents. Paragraphs 2 and 3 of that letter said:

"2 Our road interpretation plans show the PWD's long term safeguarding lines for various roads in Singapore. The primary aim of these plans is to indicate to the applicant(s) the extent of the land that would be affected by our long-term road proposals.

3 On redevelopment of the subject sites, the owners/developers are generally required to set back their development to comply with the line of road reserve and to surrender the affected land to Government."

It is far from certain that the proposed road widening would bring about a diminution in the value of the property even upon redevelopment thereof. A slight widening of the road may well be beneficial to such redevelopment and is not necessarily an adverse or minus factor. Looking at the facts, it seems to us clear that there was no ground for the appellant to invoke Clause 6.

Lastly, from the correspondence passing between the solicitors for the appellant and the solicitors for the respondents, and the affidavits that were filed, the major complaint of the appellant appeared to be that the respondents' agent in the course of negotiation with him had misrepresented the land area of the property to be over 14,000 sq. ft., which he, the appellant, subsequently discovered to be only 12,900 sq. ft. These allegations the appellant abandoned at the hearing before the High Court. It seems to us that the purported rescission by the appellant of the sale and purchase agreement was prompted by his dissatisfaction over the area of the property than by any real unsatisfactoriness of the answer contained in the road interpretation plan. If that was the position, as it seems to us it was, then we have serious doubts on the good faith of the appellant in seeking to exercise his right of rescission under Clause 6.

In the result, this appeal must fail, and is dismissed with costs. There will be the usual consequential order for the payment to the respondents or their solicitors of the amount deposited in Court as security for costs of the respondents.

*Appeal dismissed.*

Solicitors: *Ng Liang Poh & Co.; Teo Guan Teck & Co.*

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## TIGER PROPERTIES PTE. LTD. v. HAW PAR PROPERTIES (SINGAPORE) PTE. LTD.

**[C.A. (Wee Chong Jin C.J., Thean & P. Coomaraswamy JJ.) March 27, 1987]**

**[Singapore – Civil Appeal No. 59 of 1984]**

*Property Tax – Assessment of annual value of property – Assessment of property tax – Whether increase in property tax – "First assessment of the demised premises" – Meaning of – Property Tax Act (Cap. 144, 1970 Ed.), ss. 18(2) & 19(A)(1).*

*Revenue Law – Property tax – Assessment of annual value of property – Assessment of property tax – Whether increase in property tax – "first assessment of the demised premises" – Meaning of – Property Tax Act (Cap. 144, 1970 Ed.), ss. 18(2) & 19(A)(1).*

By four separate agreements, all dated September 8, 1979 the appellants agreed to lease to the respondents res-

pectively four floors of a newly-erected building called Tong Building for a term of ten years, commencing from May 15, 1979. Each of the agreements by clause 2(3) thereof contained an undertaking by the respondents in the following terms –

"2(3) To pay on demand any increase in the property tax over and above the amount of property tax payable by the landlord on the first assessment of the demised premises whether such increase is due to an increase in the annual value of the demised premises and or an increase in the rate of property tax payable."

On or about August 10, 1982 the Property Tax Division of the Inland Revenue department served on the appellants who are the owners of Tong Building two notices, namely: (a) a notice dated August 10, 1982 under section 18(2) of the Property Tax Act (Cap. 144, 1970 Ed.) ("the Act") stating that it was proposed to amend the Valuation List 1982 by increasing the annual value of Tong Building to $4,962,000 with effect from January 1, 1982; (b) a notice also dated August 10, 1982 under section 19(a)(1) of the Act stating that upon the authentication of the annual value as proposed in the notice under section 18(2) of the Act, the property tax of Tong Building for the period from April 21, 1979 to December 31, 1981 would be in the sum of $2,096,666.25.

Arising from the two notices the appellants claimed that there was an increase of property tax over and above the amount of property tax payable by the appellants "on the first assessment of the demised premises," and by their letter of June 29, 1983 they computed a sum of $444,354 as representing such increase of property tax of the demised premises payable by the respondents. This was disputed by the respondents whereupon the appellants took out an originating summons seeking a declaration in the following terms:

"a declaration that there are or have been increases in property tax over and above the amount of property tax payable by the landlord on the first assessment of the demised premises."

The application was heard by Abdul Wahab Ghows J. who dismissed it on the ground that the first assessment of the demised premises was the assessment of annual value set out in the Chief Assessor's notice dated August 10, 1982 under section 18(2) of the Act and in consequence there was no increase in property tax payable by the respondents. The appellants appealed.

The appeal turned on (i) the construction of clause 2(3) of the agreements for leases and, in particular, the words, "first assessment of the demised premises," and (ii) the question whether on the material before the court there had been an increase in the property tax over and above the property tax payable by the appellants on the first assessment of the demised premises.

**Held**: (1) in so far as clause 2(3) was concerned, it was clear that read in the context of that clause and in particular, having regard to the immediately preceding words, "property tax payable by the landlord," the word assessment means an assessment of property tax payable;

(2) in construing the clause, "first assessment of the demised premises," the court must "place itself in thought in the same factual matrix as that in which the parties were" at the time the agreements for leases were made;

(3) the assessment made in this case was an assessment of Tong Building of which the demised premises form a part and such assessment of Tong Building includes an assessment of the demised premises and therefore falls within the purview of this clause;

(4) a meaningful construction for the expression, "assessment of the demised premises" ought to be adopted and in such a situation, the principle of interpretation *ut res magis valeat quam pereat* is applicable. Adopting this approach, the assessment of property tax made by the Comptroller of Property Tax for the period April 21 to December 31, 1979 falls within the provisions of clause 2(3) of the agreements for leases. The assessment is an assessment of property tax of Tong Building of which the demised premises form a part. That assessment includes an assessment of the demised premises.

(5) the question whether there has been an increase in property tax over and above the first assessment of property tax payable on the demised premises is one of fact and a matter of computation which clearly must be based on relevant data of Tong Building;

(6) as for the question as to whether there had been an increase in property tax over and above the first assessment of property tax payable on the demissed premises, the matter should be remitted to the lower court to determine the issue.

COURT OF APPEAL.

*Lee Hock Seng* for the appellants.
*Aloysius Leong* for the respondents.

*Cur. Adv. Vult.*

**Thean J.** (delivering the Judgment of the Court): By four separate agreements, all dated September 8, 1979, the appellants agreed to lease to the respondents respectively four floors, namely, the 3rd to the 6th floors, of a newly-erected building called Tong Building, 302 Orchard Road for a term of 10 years, commencing from May 15, 1979. The rent payable for each floor is $10,290 per month, calculated at the rate of $1.50 per square foot, inclusive of service charge. Each of the agreements by Clause 2(3) thereof contains an undertaking by the respondents in the following terms:

"2(3) To pay on demand any increase in the property tax over and above the amount of property tax payable by the Landlord on the first assessment of the demised premises whether such increase is due to an increase in the annual value of the demised premises and or an increase in the rate of property tax payable."

On or about August 10, 1982, the Property Tax Division of the Inland Revenue Department

served on the appellants, who are the owners of Tong Building, two notices, namely:

(a) a notice dated August 10, 1982, under section 18(2) of the Property Tax Act (Cap. 144) ("the Act") stating that it was proposed to amend the Valuation List 1982 by increasing the annual value of Tong Building to $4,962,000 with effect from January 1, 1982;

(b) a notice also dated August 10, 1982, under section 19A(1) of the Act stating that upon the authentication of the annual value as proposed in the notice under section 18(2) of the Act, the property tax of Tong Building for the period from April 21, 1979, to December 31, 1981, would be in the sum of $2,096,666.25.

The notice under section 18(2) was issued by the Chief Assessor and the notice under section 19A(1) was issued by the Comptroller of Property Tax. Accompanying the two notices is a letter from the Comptroller of Property Tax explaining that the notices under sections 18(2) and 19A(1) were issued for the reason that Tong Building was a new building and setting out a breakdown of the sum of $2,960,666.25 which is as follows:

| *For Period* | *Amount Due* | |
|---|---|---|
| 21.4.79 – 31.12.79 (AV $2,000,000 @ 33%) | – $458,333.33 | |
| 1.1.80 – 31.12.80 (AV $2,000,000 @ 31%) | – $620,000.00 | |
| 1.1.81 – 11.8.81 (AV $2,800.000 @ 28%) | – $480,516.12 | |
| 12.8.81 – 31.12.81 (AV $4,962,000 @ 28%) | – $537,816.80 | $2,096,666.25 |
| 1.1.82 – 31.12.82 (AV $4,962,000 @ 26%) | – | $1,290,120.00 |
| | | $3,386,786.25 |

Arising from the two notices, the appellants claimed that there was an increase of property tax over and above the amount of property tax payable by the appellants "on the first assessment of the demised premises," and by their letter of June 29, 1983, they computed a sum of $444,354 as representing such increase of property tax of the demised premises as payable by the respondents. This was disputed by the respondents, whereupon the appellants took out an originating summons seeking a declaration in the following terms:

"(1) a declaration that there are or have been increases in property tax over and above the amount of property tax payable by the Landlord on the first assessment of the demised premises."

The application was heard by Abdul Wahab Ghows J. who dismissed it on the ground that the first assessment of the demised premises was the assessment of annual value set out in the Chief Assessor's notice dated August 10, 1982, under section 18(2) of the Act and in consequence there was no increase in property tax payable by the respondents. Against that decision this appeal is brought.

It is common ground that at the time when the agreements for leases were made, Tong Building was a newly-erected building and that the two notices were the first notices issued under the respective sections since the completion of the building, and prior to April 21, 1979, the property was assessed to tax on the basis of vacant land. Apart from lodging their objections to the assessment of annual value and property tax property tax proposed in the two notices – presumably the objection to the annual value was made under section 18(3) and the objection to the property tax was made under section 19A(2) – which objections, however, were rejected, the appellants did not appear to have contested the legality or validity of these notices. Hence, both the notices stand as valid, and for the purpose of this appeal they are treated as valid.

This appeal turns on (i) the construction of clause 2(3) of the agreements for leases and, in particular, the words, "first assessment of the demised premises," and (ii) the question whether on the material before us there has been an increase in the property tax over and above the property tax payable by the appellants on the first assessment of the demised premises. On the issue of construction, it is necessary to consider first the meaning of the word "assessment." In relation to property tax, that word is capable of two meanings, depending on the context in which it is used: it can mean an assessment of the annual value of a property for the purpose of property tax or it can mean an assessment of property tax payable on the property. In so far as clause 2(3) is concerned, it is clear that read in the context of that clause and, in particular, having regard to the immediately preceding words, "property tax payable by the Landlord," the word "assessment" means an assessment of property tax payable. If this is the meaning of the word, "assessment," as in our opinion it is, then the notice which we have to consider is that

issued by the Comptroller of Property Tax under section 19A(1) of the Act, read together with the accompanying letter which explained how the total amount of property tax of $2,960,666.25 was arrived at. Reading these two documents together, it is clear that property tax for the building was assessed as follows:

(a) $458,333.33 for the period April 21, 1979 to December 31, 1979;

(b) $620,000 for the period January 1, 1980 to December 31, 1980;

(c) $480,516.12 for the period January 1, 1981 to August 11, 1981; and

(d) $537,816.80 for the period August 12, 1981 to December 31, 1981;

and it is also clear that the assessment of property tax amounting to $458,333.33 for the period April 21, 1979 to December 31, 1979 was the first assessment of property tax payable.

The next question is whether this first assessment was a first assessment of the demised premises. It is contended on behalf of the respondents that in each of the agreements the demised premises have been specifically described in the schedule thereto, and that so described the demised premises means the particular floor of the building. The assessment relied upon by the appellants is an assessment of Tong Building as a whole and not specifically of the demised premises. In our opinion the respondents' argument is unsustainable.

In construing this clause, the Court must "place itself in thought in the same *factual matrix* as that in which the parties were" at the time the agreements for leases were made. Both the appellants, as the landlords, and the respondents, as the tenants, must have appreciated at the time that Tong Building, being a building then just completed or substantially completed, would be assessed as a building for property tax; that until then the property was assessed as vacant land for property tax, and that the demised premises being a part of the building would have to bear a proportionate part of the property tax attributable to them. In agreeing to the rent at $1.50 per square foot per month both parties must or would have appreciated that the Chief Assessor would take this rental into consideration in assessing the annual value of the building and, in particular, the floors in question – the 3rd to the 6th floors – and that the rent they agreed upon would have to include an element of property tax to be assessed. The parties would also have forseen that subsequently after the first assessment, there would or might be increases in the property tax, bearing in mind that the leases are for a term of 10 years; naturally the landlords would have to ensure that the profit element in their rent, based on their calculation then arrived at, would not be eroded in the future by such increases, and it must have been contemplated by both that these increases would be borne by the tenants. It seems to us clear that the intention of the parties was:

(a) that the first assessment of the property tax payable on the demised premises, after the agreements for leases, would be borne by the landlords, and

(b) that thereafter any increase in property tax over and above this first assessment would be borne by the tenants,

and clause 2(3) was drafted precisely to give effect to this intention; unfortunately as it turns out the words used are far from being precise. The assessment made in this case is an assessment of Tong Building of which the demised premises form a part, and such assessment of Tong Building includes an assessment of the demised premises and therefore falls within the purview of this clause. Construed in this way, the clause will give effect to the intention of the parties. In this connection, the following passage from paragraph 766 of Vol. 1 of *Chitty* on Contracts is apposite:

> "766. *Intention of the parties.* The cardinal presumption is that the parties have intended what they have in fact said, so that their words must be construed as they stand. That is to say, the meaning of the document or of a particular part of it is to be sought in the document itself: 'One must consider the meaning of the words used, not what one may guess to be the intention of the parties.' However, no contract is made in a vacuum. In construing the document, the court must therefore always have regard to its commercial purpose and the factual background against which it was made.
>
> Further, the law does not approach the task of construction with too nice a concentration on individual words. 'The common and universal principle ought to be applied: namely, that [an agreement] ought to receive that construction which its language will admit, and which will best effectuate the intention of the parties, to be collected from the whole of the agreement, and that greater regard is to be had to the clear intention of the parties than to any particular words which they may have used in the expression of their intent.' "

If the expression, "first assessment of the

demised premises," is construed so restrictively as contended by the respondents, then clause 2(3) will become functionless. An examination of the Act will demonstrate this conclusion. Under section 9(1) of the Act, the Chief Assessor prepares a Valuation List of all houses, buildings and tenements, and the Valuation List contains, *inter alia*, a description or designation sufficient for identification, the name of the owner and the annual value ascribed thereto. Under section 9(3) each part of a building divided laterally or horizontally into parts in such a manner that the owner, either solely or jointly with other owners, of one part is not also the owner, either solely or jointly with the same other owners respectively of any other part, then each part is deemed to be a building. Further, under section 9(4) each part of a partially completed building, divided laterally or horizontally into parts is deemed to be a building if it is used for human habitation or otherwise. Upon the Valuation List of a building being authenticated under the Act, property tax is then assessed on the building based on the annual value thereof. Hence, only in two cases as stated in subsections (3) and (4) of section 9 of the Act can there be an assessment of property tax on a part of a building. Neither of these subsections applies to the demised premises, and accordingly, the demised premises are not a building within the meaning of the Act. Consequently, there is no provision enabling the Chief Assessor to assess the annual value of the demised premises as a building in the Valuation List and none enabling the Comptroller of Property Tax to assess the demised premises to property tax separately. Hence, both in respect of the annual value and in respect of the property tax, it is not possible under the Act to have a separate assessment of the demised premises.

Accordingly, a meaningful construction for the expression, "assessment of the demised premises," ought to be adopted, and in such a situation, the principle of interpretation, *ut res magis valeat quam pereat*, is applicable. As stated in paragraph 785 of Vol. 1 of *Chitty* on Contracts (25th Edn.):

> "785 *Saving the document.* In order to give effect to the intention of the parties and to 'save' the document, if possible, the court will adopt various expedients. This rule is often expressed in the phrase *ut res magis valeat quam pereat.* That is to say, if by any reasonable construction the intention of the parties can be arrived at and that intention carried out consistently with the rules of law, the court will take that course. So the court will go to the trouble of reforming the document either by restricting, supplying, transposing, rejecting or modifying words or terms in the document, provided the intention of the parties is plain in spite of the words."

Adopting this approach, the assessment of property tax made by the Comptroller of Property Tax for the period April 21 to December 31, 1979, falls within the provisions of clause 2(3) of the agreements for leases. As we have just said, the assessment is an assessment of property tax of Tong Building of which the demised premises form a part; that assessment includes an assessment of the demised premises.

We now turn to the question whether there has been an increase in property tax over and above the first assessment of property tax payable on the demised premises. This is a question of fact and a matter of computation which clearly must be based on relevant data of Tong Building. This issue, unfortunately, has not been canvassed before Abdul Wahab Ghows J. or before us; nor is there sufficient material for the learned Judge or for us to determine it. The computation as shown by the appellants in the letter dated June 29, 1983, written on their behalf is far from satisfactory and difficult to follow. In order to succeed on this issue, the appellants must show, *inter alia*, the following: (i) whether the annual value of Tong Building amounting to $2,000,000 in 1979 with effect from April 21, 1979 was made by the Chief Assessor on the basis that Tong Building at that time was a partially or wholly completed building; (ii) a breakdown of the annual value of the shop and office units respectively of Tong Building at that time; (iii) a breakdown of the annual value of the shop and office units as from January 1, 1981; (iv) whether the increase in annual value as from January 1, 1981, was due to the completion of the building or to increase in the number of shop or office units let out as from that year, or both, and (v) the reasons for the huge increase in annual value of the building as from August 12, 1981. It seems to us that the appellants must have available these data or they are obtainable by them from the Property Tax Division of the Inland Revenue Department. All these have to be adduced in order to enable the Court to decide whether or not there has been an increase in property tax over and above the first assessment of property tax payable on the demised premises.

In the result the appeal succeeds to the extent that the order of Abdul Wahab Ghows J. is set aside and the matter is remitted to the Court below to determine the issue. As for costs, having regard to all the circumstances of this case, we or-

der each party to pay their own costs before us and before Abdul Wahab Ghows J. There will be the usual consequential order for the refund to the appellants or their solicitors of the amount deposited by the appellants as security for costs of the respondents in this appeal.

*Order accordingly.*

Solicitors: *Ramdas & Wong; Netto Low, Abraham & Partners.*

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## ANG ENG LEE & ANOR. v. LIM LYE SOON

[C.A. (Sinnathuray, Thean & Rajah JJ.) August 29, 1986]

[Singapore — Civil Appeal No. 42 of 1984]

*Road Traffic — Motor accident — Infant knocked down by lorry — Negligence — Finding of facts by lower court reversed on appeal. — Lorry driver negligent and eight year old infant partly negligent.*

*Negligence — Infant 8 years old — Contributory negligence — Apportionment of liability.*

*Practice and Procedure — Findings of facts by lower court reversed.*

*Practice and Procedure — Accident cases — Question of negligence — Questions a trial judge should pose to himself.*

*Practice and Procedure — Personal injuries case — Injury to infant — Father's loss and expenses — Whether independent cause of action in father.*

*Damages — Infant claimant — Contributory negligence — Father's loss and expenses — Whether independent cause of action.*

This appeal arose from a claim made in the District Court by the appellants against the respondent for damages for negligence arising out of a road accident in which the first appellant, an eight year old infant, was knocked down and injured by a lorry driven by the respondent. At the conclusion of the hearing in the District Court, the learned District Judge found that the defendant's version was the more probable one and dismissed the plaintiffs' claim. Against the decision, the plaintiffs appealed to the High Court. Kulasekaram J. also dismissed the appeal on the ground that the defendant was not travelling at an excessive speed at the time of the accident and was not in any way negligent. The plaintiffs appealed.

**Held**, by a majority (Sinnathuray J. dissenting): (1) the defendant was negligent in the driving of his lorry at the material time;

(2) the first plaintiff, though a young child of 8 years old, could not be regarded as too young to be incapable of contributory negligence. He could be expected to exercise reasonable care of not running across the road in the path of an oncoming lorry. He ought reasonably to have foreseen the danger. He was partly to blame for the accident and there was contributory negligence on his part;

(3) in view of his young age, the liability was apportioned as follows: two-thirds thereof to the defendant and one-third to the first plaintiff;

(4) the loss and expenses set out in the statement of claim, if proved, were those of the first plaintiff and he was entitled to recover them in this action; they arose out of his need for the services which in this case were paid for by the second plaintiff. The second plaintiff had no cause of action against the defendant and ought not to have been joined in the first place. The second plaintiff's appeal should therefore be dismissed.

*Cases referred to:*

(1) *Donnelly* v. *Joyce* [1974] 1 Q.B. 454.
(2) *Muthusamy* v. *Ang Nam Cheow* [1979] 2 M.L.J. 271.
(3) *Peter Thomas Mahon* v. *Air New Zealand & Ors.* [1984] A.C. 808, 814.

COURT OF APPEAL.

*V Ramayah* for the appellants.

*Benedict Chan Tuck Kiang* for the respondent.

*Cur. Adv. Vult.*

**Thean J.** (delivering the majority Judgment of the Court): The first plaintiff, an infant, was knocked down and injured by a motor lorry, No. YA 9087D, at Sungei Tengah Road on January 15, 1981. The lorry at the material time was driven by the defendant. Suing by his father and next friend, he brought this action against the defendant claiming damages for negligence; joined as the second plaintiff is his father who claimed damages for loss and expenses incurred on account of the injuries sustained by the first plaintiff. At the time of the accident, the first plaintiff was 8 years old and he lived with his parents at 96 Sungei Tengah Road in Chua Chu Kang. He said that on that day, at about 11.00 a.m., he left his house to catch a bus to go to school. He had to cross the road and before he crossed he looked at both sides, left and right, and saw no vehicle approaching; he then walked across the road. When he reached the other side of the road he was knocked down and lost consciousness. He said that when he was knocked down he was standing on the grass verge and not on the road; he was not facing the lorry and the nearside front part of the lorry hit him.

The claims were resisted by the defendant; he denied any negligence on his part. He said that on